

# Agenda Item Form

Agenda Date: 6/2/04

Districts Affected: 3

Dept. Head/Contact Information: Patrick T. Abeln, Director of Aviation/780-4724

## Type of Agenda Item:

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Resolution            | <input type="checkbox"/> Staffing Table Changes              | <input type="checkbox"/> Board Appointments        |
| <input type="checkbox"/> Tax Installment Agreements       | <input type="checkbox"/> Tax Refunds                         | <input type="checkbox"/> Donations                 |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer                     | <input type="checkbox"/> Item Placed by Citizen    |
| <input type="checkbox"/> Application for Facility Use     | <input type="checkbox"/> Bldg. Permits/Inspection            | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements            | <input checked="" type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application         |
| <input type="checkbox"/> Other _____                      |  |  |

## Funding Source:

- ☒ General Fund
- ☐ Grant (duration of funds: \_\_\_\_\_ Months)
- ☐ Other Source: Account #52620005-502107-40101

## Legal:

- ☒ Legal Review Required      Attorney Assigned (please scroll down): Sylvia Firth      ☒ Approved      ☐ Denied

Timeline Priority:   ☐ High      ☒ Medium      ☐ Low      # of days: \_\_\_\_\_

## Why is this item necessary:

Real time public information on flight arrival/departure status. (see attached memo)

## Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

Set up fee = \$250.00

License fee - \$3,900.00 per year to use of FlightView Response Data in Airport Operations and \$900.00 per year for use on EPIA's web site.

## Statutory or Citizen Concerns:

NONE

## Departmental Concerns:

NONE

ITEM: That the Mayor be authorized to sign a FlightView Monitor License Agreement by and between RLM Software ("RLM") and the City of El Paso, acting by and through its Department of Aviation ("EPIA") to have RLM's proprietary FlightView Data accessible to Airport Operations and on EPIA's web site. The term of the Agreement shall be for one year commencing on July 1, 2004 at a total cost of \$5,050.00.



# EL PASO INTERNATIONAL AIRPORT

## Memorandum

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**TO :** Mayor & Council  
**FROM:** Patrick T. Abeln, A.A.E., Director of Aviation  
**CC:** Jim Martinez, CAO  
**SUBJECT:** Flight View Monitor License Agreement  
06-02-02 Council Agenda  
**DATE:** May 26, 2004

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*Patrick Abeln*

The Airport is engaged in a major technology upgrade for our passenger information services. The total initiative is described in full detail in the attached memo. **The Flight View Monitor System is described in detail in Section Four of the memo.**

The information describes how the flight view system will service our passengers, as well as meeters and greeters. This entire initiative, and the flight view system as a discreet portion of this system, will provide our airport, and its customers, with the best possible customer and information service. The annual cost of this software and real time flight information is \$4,000. The system received the unanimous approval of the Airport Advisory Board, and the Department of Aviation highly recommends approval of this item.



## El Paso International Airport

FAA Regional Airport Safety Award 2002 FAA Outstanding Texas Airport 2002

### MEMORANDUM

To : Mayor Joe Wardy  
City Council Representations  
Jim Martinez, CAO

From: Patrick T. Abeln, A.A.E.  
Director of Aviation

Date: April 22, 2004

Subject: Airport Technology Upgrade

Many of you and others in the community have asked when we will implement wireless technology at the airport. The short answer is we are targeting July / August 2004.

During July of 2004 the City of El Paso/ Department of Aviation will open the new Consolidated Security Checkpoint and Meeter Greeter Area. This will be among the nations newest and most efficient security screening systems. It will also include a new convenient and strategically located passenger waiting area.

This project also involves a great deal of security technology and associated support equipment.

In working with the T.S.A. and our airlines on this project, we are also preparing a technology upgrade for El Paso International Airport to include:

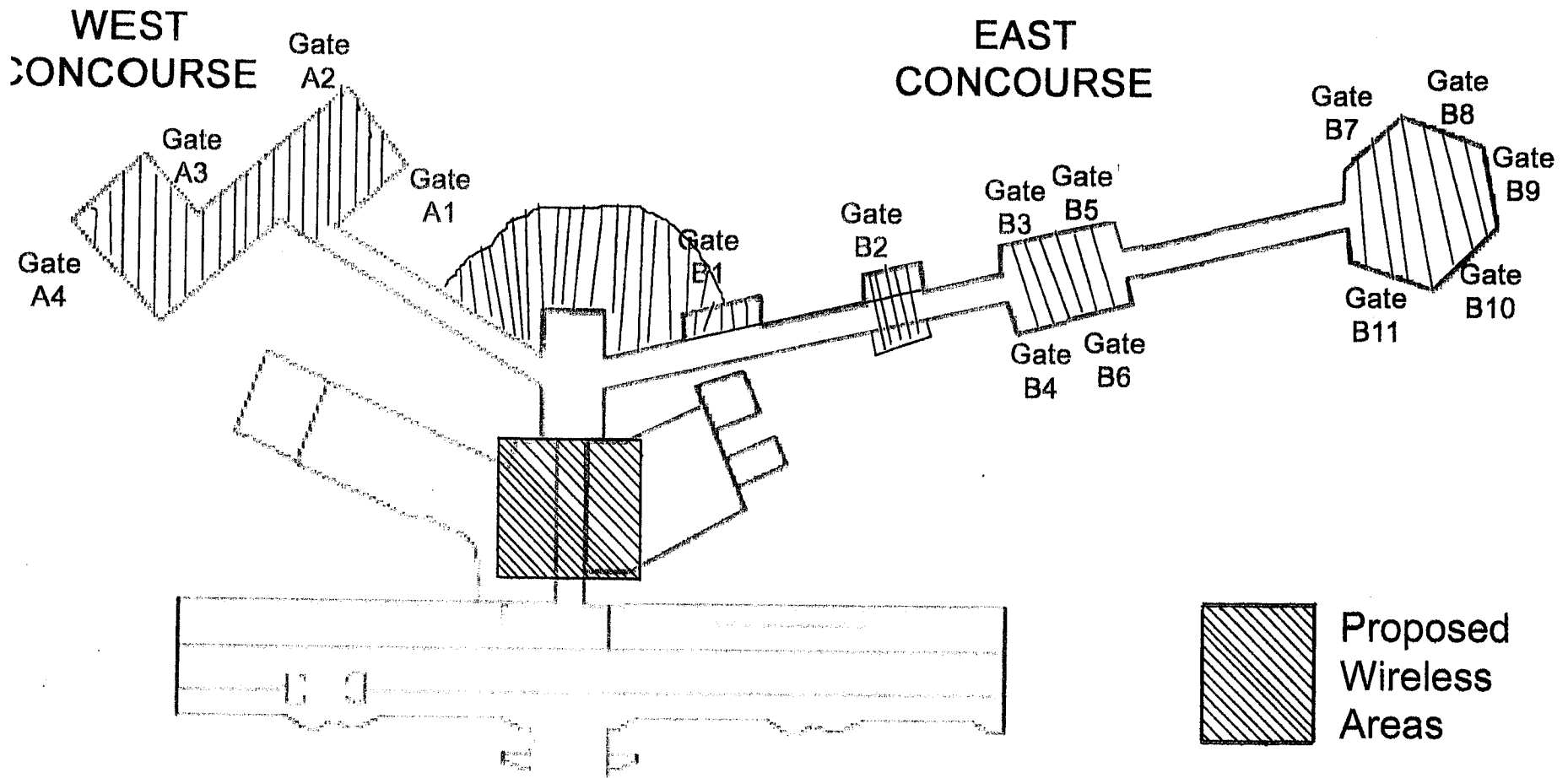
1. **Wireless Service** at key passenger waiting areas at El Paso International Airport. (See Attached Exhibit).
2. **The flight schedule for El Paso International Airport** will go online and will be linked to our website and will include links to all El Paso International Airport Airlines reservation systems. We will include non-stop flights out of Ciudad Juarez Airport on this system. This will highlight the air transportation strength of our region and allow the business traveler or tourist to benefit for the total air system of the Borderplex.
3. **Our current flight information display T.V. screens (FIDS for short) will receive their signal from an F.A.A. data base rather than just updates from local airline employees.** This means that the FIDS are updated every six minutes based on the actual position /status of the aircraft. Our airlines will no longer be tasked with manual entry of this data. In short, our customers will receive the best most updated information. During weather, mechanical, or other delays, when employee time is maxed out, airlines will be free to assist customers and manage rebooking of passengers , etc. and not have to update our FIDS.

4. **We will also have a graphic flight information display system at two locations.** This will be a widescreen T.V. that covers a geographical area from LAX—DEN—DFW—HOU. The screen also using the FAA database will show the actual position of each commercial airline flight into or out of El Paso. (See Attached Example for Halifax N.S. Note Halifax Airport Code is YHZ). The information is from the FAA database and is updated every six minutes. This is a great tool for our customers to set a visual sense where an actual flight is. It is also a great educational tool for children and others. We also have other uses for this data that relate to public safety and fire issues.
5. The last technology upgrade will involve **clocks at the Airport.** All of our public clocks will be linked to a G.P.S. system. This satellite system will provide a continuous 24 hour signal ensuring that every clock is accurate to a fraction of a second and that all clocks match.

Over the last two years we have worked with our Airlines, the Transportation Security Administration and others to try to ensure that we move forward in a logical manner in our application of technology appropriate to our customers and airport needs.

Although wireless is easy to use, it is very difficult to implement in an airport environment, rich with electronic signals and interference. Our goal is to develop a system to serve our tenant's operational needs, as well as, our passengers. We are tasked to develop a system that does not disrupt existing Government/Airlines communications or operations.

# El Paso International Airport



Rev. 04/22/04

# FlightView Monitor



El Paso International Airport

## Flights:

✈ Departures

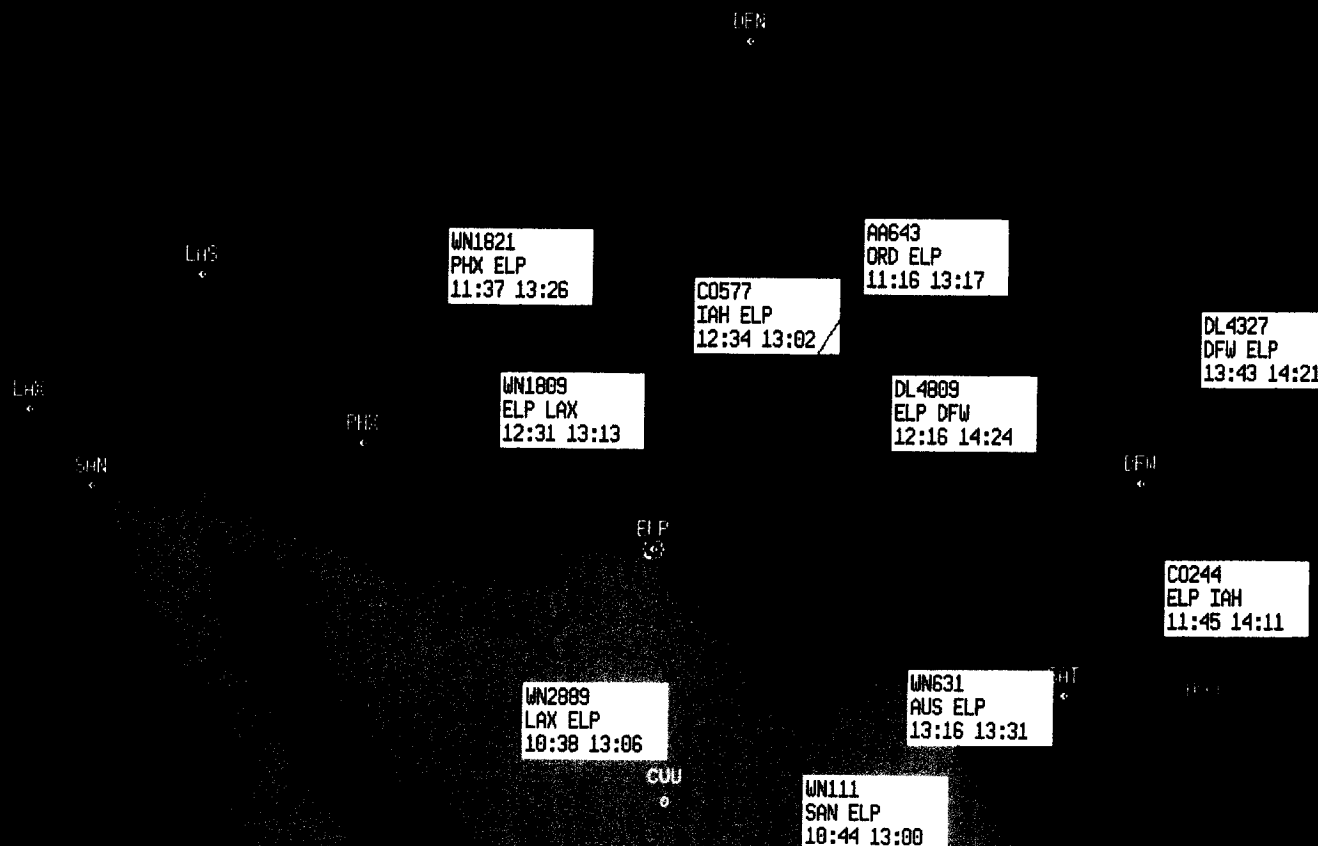
✈ Arrivals

## Airlines:

AA - American  
 SD - Aerolitoral  
 F9 - Frontier  
 HP - America West  
 CO - Continental  
 DL - Delta  
 WN - Southwest  
 UA - United

## Airport Cities:

ABQ Albuquerque  
 ATL Atlanta  
 AUS Austin  
 CHI Chicago  
 CUU Chihuahua  
 DAL Dallas/Fort Worth  
 DEN Denver  
 HOU Houston  
 LAS Las Vegas  
 LAX Los Angeles  
 LBB Lubbock  
 MAF Midland/Odessa  
 PHX Phoenix  
 SAT San Antonio  
 SAN San Diego



## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a FlightView Monitor License Agreement by and between RLM Software ("RLM") and the City of El Paso, acting by and through its Department of Aviation ("EPIA"), to have RLM's proprietary FlightView® Data accessible to Airport Operations and on EPIA's web site. The term of the Agreement shall be for one year commencing on July 1, 2004 at a total cost of \$5,050.00.

**APPROVED** this the 2nd day of June, 2004.

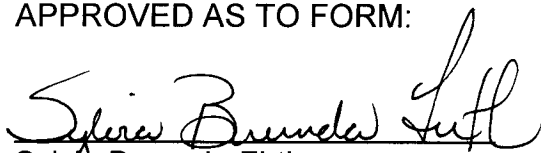
THE CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy  
Mayor

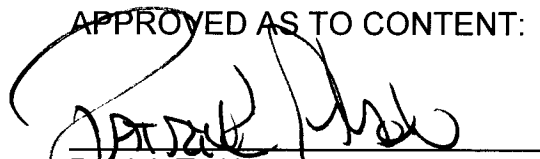
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
Sylvia Borunda Firth  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
Patrick T. Abeln, A. A. E.  
Director of Aviation

ORIGINATING DEPARTMENT: AIRPORT

## **FLIGHTVIEW MONITOR LICENSE AGREEMENT**

This FlightView Monitor License Agreement ("Agreement") is effective as of the 2nd day of June 2004 by and between RLM Software ("RLM"), a Massachusetts corporation with its principal offices at 214 Lincoln Street, Suite 213, Boston, Massachusetts 02134, and the City of El Paso, acting by and through its Department of Aviation ("EPIA"), a Texas municipal corporation, with offices at 6701 Convair Road, El Paso, TX 79925 and RLM and EPIA hereby agree as follows:

### **BACKGROUND**

EPIA and RLM each desire that RLM make its proprietary FlightView® Data accessible to Airport Operations and on EPIA's web site, subject to the provisions of this Agreement. To achieve this objective, it is contemplated that Airport Operations and on EPIA's web site will retrieve FlightView Response Data, from the FlightView Web Server, subject to the provisions of this Agreement.

### **1. DEFINITIONS**

"Airport Operations" means five information displays physically located at the terminal at EPIA and web pages created for EPIA.

"ASD Data Feed" means the Limited Aircraft Situation Display data feed of the FAA, currently supplied through a memorandum of agreement between RLM and the FAA.

"FAA" means the Federal Aviation Administration.

"FlightView Data" means flight data for EPIA, derived by RLM from the ASD Data Feed using proprietary information and techniques.

"FlightView Data Request" means a request made to the FlightView Web Server.

"FlightView Web Server" means a web server provided by RLM for access by EPIA for the retrieval of FlightView Data.

"FlightView Response Data" means that subset of FlightView Data providing information in a graphical format about flights for which the departure or arrival airport is EPIA. The FlightView Response Data will be similar to the exhibit in Appendix A.

"Parties" means RLM and EPIA.



## 2. GRANT OF LICENSE

Subject to the terms of this Agreement, RLM hereby grants to EPIA a non-exclusive worldwide license to make FlightView Response Data available on Airport Operations and on EPIA's web site during the term of this Agreement. The license granted hereby is limited to causing display of FlightView Response Data in Airport Operations and on EPIA's web site. No license is granted hereunder for the retransmission of any FlightView Response Data for use in another commercial service.

## 3. RESPONSIBILITIES OF THE PARTIES

3.1. **Duties of RLM.** RLM at its own expense, shall be responsible for:

3.1.1. FlightView Web Server. Providing the FlightView Web Server to process queries from EPIA's server and to reply with FlightView Response Data in a graphical display in Airport Operations and on EPIA's web site. RLM shall make the FlightView Web Server, and the FlightView Response Data available on a 24 hour - 7 days a week basis (subject to an allowance for 10 hours of downtime for technical reasons that is reasonable and customary for companies primarily engaged in providing Internet services, and subject further to interruptions in service caused by interruptions in the ASD Data Feed and/or failures of telecommunications providers or power outages).

3.1.2. Notice of Changes. Providing to EPIA 14 days notice concerning upcoming changes in its and FlightView Response Data.

3.2. **Duties of Company.** In connection with publishing the FlightView Response Data in Airport Operations and on EPIA's web site, EPIA shall:

3.2.1. References to FAA. EPIA shall refer to the data provided for EPIA in accordance with this Agreement only as FlightView data and EPIA shall make no reference to the FAA or ASD. Neither the United States Government nor the FAA endorses, guarantees or makes any representation about the availability, accuracy, reliability, or any other quality of the ASD Data Feed.

3.2.2. Display of FlightView Trademark and Logo. Each time EPIA displays FlightView Response Data in a graphical map format, EPIA shall include the "Powered by FlightView" logo and a credit line referencing RLM and its FlightView

trademark with respect to the source of flight information being provided, substantially in the form of "FlightView is a registered trademark of RLM Software". When the FlightView Response Data is displayed on the EPIA's web pages in a graphical map format the credit line shall be accompanied by a hypertext link to the RLM Web Site (URL: <http://www.flightview.com/>). This credit line shall not be suppressed or modified in the course of making the FlightView Pages available on EPIA Web Site.

3.2.3 Promotional Material. EPIA promotional material which makes reference to projects actually using the real-time flight tracking data provided by RLM, shall credit RLM in the form of "FlightView data by RLM Software." However, no such requirement shall apply to the promotion of EPIA's services generally, but does not reference a specific project utilizing RLM data.

3.2.4 License Restrictions. EPIA may not, nor may it permit others to: (1) use FlightView® Data for air safety or air traffic control or in violation of any FAA regulations; or (2) export, reexport or use FlightView® Data or any copy thereof in violation of the export control laws or other laws of the United States of America or any other country. The terms and conditions for indirect subscribers set forth in the Federal Aviation Administration's Memorandum of Agreement For Industry Access to Aircraft Situation Display and National Airspace System Status Information Data dated August 9th, 2002 are incorporated herein by reference.

3.2.5 Compliance with Law; Disclaimer. EPIA must use the FlightView Response Data in the Airport Operations and on EPIA's web site in compliance with all requirements of law, including any restrictions imposed by the FAA or any other governmental agency.

3.3. **Promotional Materials/Press Releases.** Neither Party shall issue any marketing, advertising, and other promotional materials, which reference the other Party without first having obtained the prior written approval of such other Party.

#### 4. **INTELLECTUAL PROPERTY RIGHTS.**

4.1. **FlightView Data; FlightView Response Data; FlightView Trademark.** As between RLM and EPIA, RLM retains sole and exclusive ownership in the FlightView Data, all copyrights

associated therewith, and the FlightView trademark. RLM's sole and exclusive ownership includes its business methods and concepts, including methods of data capture, array and display used in deriving and generating the FlightView Data.

- 4.2. **Marks.** Subject to each Party's approval rights in 3.3 above, in using each other's trade names, trademarks and service marks, hereunder ("Marks"), each Party acknowledges and agrees that (a) it will use the other Party's Marks in accordance with that Party's guidelines; (b) the other Party's Marks are and shall remain the sole property of the other Party; (c) nothing in this Agreement shall confer in the Party any right of ownership in the other Party's Marks; and (d) the Party shall not now or in the future contest the validity of the other Party's Marks.

## 5. PAYMENTS

- 5.1. **Fees.** EPIA shall pay RLM, a set up fee of \$250 dollars, payable in advance and a fee for the license granted hereunder, the sum of \$3,900.00 per year for the use of FlightView Response Data in Airport Operations and the sum of \$900.00 per year for the use of FlightView Response Data on EPIA's web site.
- 5.2. **Payment.** Within thirty (30) days after receiving the invoice, EPIA shall pay the fee due. Interest charges of 1 percent per month (or, if lower, the highest rate permitted by law) will accrue on all amounts not paid within thirty (30) days of receipt of the invoice.

## 6. TERM AND TERMINATION

The term of this Agreement shall begin on July 1st, 2004 and continue for a period of one (1) year from the Activation Date RLM shall have the right to terminate this Agreement if Customer fails to pay any Payment (as specified in Section 5.1) and such failure continues for fifteen (15) business days after written notice of default provided by RLM to EPIA.

RLM may terminate this Agreement if it no longer has access to the ASD Data Feed. In the event of termination, EPIA shall be fully reimbursed a pro rata share of the license fee for the remainder of the term in which the Agreement is terminated.

Either Party may terminate this Agreement at any time in the event of a material breach by the other Party, which remains uncured after thirty (30) days' written notice thereof.

## **7. CONFIDENTIALITY**

Each Party acknowledges and agrees that any and all information emanating from the other Party's business and not publicly known, including, without limitation, the contents of this Agreement, technical processes and formulas, source codes, names, addresses, and information about network subscribers, product designs, customer lists, sales, cost and other unpublished financial information, product plans, and marketing data, is confidential and proprietary information. Each Party agrees that it shall take reasonable steps, at least substantially equivalent to the steps as it takes to protect its own proprietary information, during the term of this Agreement, to prevent the duplication or disclosure of any such confidential and proprietary information, other than by or to its employees or agents who must have access to such information to perform such Party's obligations hereunder, who shall each treat such information as provided herein, and as may be required by either of the parties for public or private financing (provided, however, that the party seeking to disclose such information in connection with a financing shall give prior notice of such a proposed disclosure to the other Party and an explanation of why such disclosure is deemed necessary). If such information is publicly known, already known by, or in the possession of, the non-disclosing Party; is independently developed by the non-disclosing Party; is thereafter rightly obtained by the non-disclosing Party from a source other than the disclosing Party; or is required to be disclosed by law, regulation, or court order; then there shall be no restriction of the use of such information.

## **8. REPRESENTATIONS AND WARRANTIES**

- 8.1. **EPIA** **EPIA** represents and warrants to RLM that to the best of its knowledge, the Site will not infringe on any U. S. copyright, patent or any other proprietary right of any third Party.
- 8.2. **RLM.** RLM represents and warrants to Company that (a) the FlightView Data do not and will not contain any content or material that infringes on or violates any applicable law or regulation, or any proprietary right of any third Party; and (b) it has the right to grant the license provided in this Agreement.

## **9. LIMITATION OF LIABILITY: DISCLAIMER; INDEMNIFICATION**

- 9.1. **Liability. OTHER THAN THE INDEMNIFICATION OBLIGATIONS AS PROVIDED IN SECTION 9.3 BELOW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM THE USE**

**OR INABILITY TO USE THE FlightView Data, THE FLIGHTVIEW WEB SERVER, OR THE FLIGHTVIEW RESPONSE DATA, OR ANY OTHER PROVISION OF THIS AGREEMENT SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS.**

- 9.2. No Additional Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY THEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE FLIGHTVIEW DATA, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING COMPANY SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING THE PROFITABILITY OF THE SITE OR DATA STREAM.
- 9.3. Indemnity.** To the extent permitted by applicable law each Party will defend, indemnify, save and hold harmless the other Party and the officers, directors, agents, affiliates, distributors, franchisees and employees of the other Party from any and all third-party claims, demands, liabilities, costs or expenses, including reasonable attorneys' fees ("Liabilities"), resulting from the indemnifying Party's breach of any material duty, representation, or warranty contained in this Agreement except there shall be no obligation to indemnify, defend, save and hold harmless where Liabilities result from the gross negligence or knowing and willful misconduct of the other Party.
- 9.4. Claims.** Each Party agrees to promptly notify the other Party in writing of any indemnifiable claim and give the other Party the opportunity to defend or negotiate a settlement of any such claim at such other Party's expense, and cooperate fully with the other Party, at that other Party's expense, in defending or settling such claim.

## **10. GENERAL**

- 10.1. Amendment.** No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both Parties.
- 10.2. Assignment.** Neither this Agreement, nor any rights hereunder in whole or in part, shall be assignable or otherwise transferable by either Party, and the obligations contained in this Agreement shall

survive and continue after termination of this Agreement, provided that either Party may assign or transfer this Agreement and rights and obligations hereunder to any current or future affiliates or successor company if such assignee agrees in writing to the terms and conditions herein.

- 10.3. **Compliance with Laws.** This Agreement and the Parties' actions under this Agreement shall comply with all applicable Federal, state, and local laws, rules, regulations, court orders, and governmental or regulatory agency orders.
- 10.4. **Construction.** In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed, or if any such provision is held invalid by a court with jurisdiction over the Parties to this Agreement, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law and the remainder of this Agreement shall remain in full force and effect.
- 10.5. **Governing Law; Forum.** This Agreement shall be governed by and construed and enforced in accordance with the law of the State of Texas without giving effect to conflict of laws. Any dispute or controversy arising out of or involving this Agreement shall be tried exclusively in a Texas state court, and each Party hereby irrevocably consents to the jurisdiction of such court.
- 10.6. **Entire Agreement.** This Agreement sets forth the entire agreement and supersedes any and all prior agreements, written or oral, of the Parties with respect to the transactions set forth herein. Neither Party shall be bound by, and each Party specifically objects to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is proffered by the other Party in any correspondence or other document, unless the Party to be bound thereby specifically agrees to such provision in writing.
- 10.7. **Independent Contractors.** The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

**10.8. No Waiver.** The failure of either Party to insist upon or enforce strict performance by the other Party of any provisions of this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver or relinquishment to any extent of such Party rights to assist or rely upon any such provision of right in that or any other instances; rather, the same shall be and remain in full force and effect.

**10.9. Notice.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed or (ii) one business day after deposit with a commercial overnight carrier, with written verification of receipt to the address of the Party to whom the same is directed as set forth below:

El Paso International Airport  
Attn: Director of Aviation  
6701 Convair Road  
El Paso, TX 79925-1029

RLM Software  
Attn: Contracts  
214 Lincoln St. – Suite 213  
Boston, MA 02134

**10.10. Survival.** Sections 5 through 10 shall survive the completion, expiration, termination or cancellation of this Agreement.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement as of the date first above written.

THE CITY OF EL PASO:

\_\_\_\_\_  
Joe Wardy  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Momsen Duffy  
City Clerk

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

\_\_\_\_\_  
Richarda Momsen Duffy

City Clerk

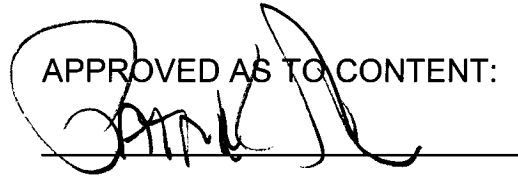
APPROVED AS TO FORM:



Sylvia Borunda Firth

Assistant City Attorney

APPROVED AS TO CONTENT:

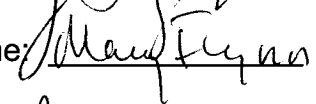


Patrick T. Abeln, A. A. E.

Director of Aviation

RLM SOFTWARE

By: 

Printed Name: 

Title: 



## Appendix A

